

(2011) 03 KL CK 0016
In the High Court Of Kerala
Case No : W.A. No. 2070 of 2010

P. Sachidanandan and Another	Vs	APPELLANT
State of Kerala and Others		RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Citation : (2011) 2 KLJ 490 : (2011) 2 KLJ 489 : (2011) 2 KLT 246

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : P.J. Mathew and Thomas John Ambooken, for the Appellant; T.B. Remani (G.P.), for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The question raised in the writ appeal and the original petition is one and the same, that is, whether the High School Teachers promoted and posted on transfer basis to Higher Secondary School as teachers could before declaration of probation and confirmation claim posts of Headmaster, A.E.O. and other higher posts to which they were entitled but for the promotion they opted. We have heard counsel for both sides and also Government Pleader for the State and its agencies. On going through the judgment under appeal, we notice that the learned single Judge only followed the Full Bench judgment of this Court and another decision of the Supreme Court wherein it is clearly stated that unless probation is declared and service regularised, the promoted high school assistants cannot be treated as permanent teachers of Higher Secondary Schools. Both the writ petitioners in the writ petition disposed of by the learned single Judge by the common judgment were not made permanent Higher Secondary School Teachers. Before their regularisation and confirmation as Higher Secondary School Teachers, vacancies arose in the very same high school for the post of Headmaster and also for A.E.O. in the area to which they were eligible by virtue of the seniority list of H.S.As. We do not find any ground to interfere with the judgment of the learned

single Judge because, the principle is that until the promoted teacher is confirmed and regularised in the Higher Secondary School, he/she is always free to return to the original cadre, that is, high school again as teacher irrespective of whether it is a voluntary act or on account of failure to complete probation successfully in the Higher Secondary School. In other words, lien and service benefits and eligibility for promotion and other benefits as H.S.A. will always be available to the Higher Secondary School Teachers going on transfer posting to Higher Secondary Schools until they are regularised and confirmed in such schools. Admittedly, both the petitioners in the writ petition were found to be not made permanent Higher Secondary School Teachers and consequently learned single Judge found them eligible to claim the higher post to which they were eligible but for the promotion they opted, that is, post of Headmaster in the Higher Secondary School, A.E.O. etc. We, therefore, do not find any merit in this writ appeal. Consequently it is dismissed.